IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2003 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVIN LAXMIMAL SINGHVI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 2003 of 2000

MR AD SHAH for Petitioner

MR AD OZA Learned PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 06/10/2000

C.A.V. JUDGEMENT

1. This is a petition of the petitioner filed under Section 482 of the Criminal Procedure Code, 1973 (for

short "the said Code") for quashing the proceedings against him pending before the Sessions Court for offences punishable under Section 120 B, 121, 122,123 and 212 of the Indian Penal Code as well as under Sections 25 and 27 of the Arms Act. The F.I.R. was registered against him on 20.1.2000, then investigation was gone into and charge sheet was filed before the Magisterial Court against the petitioner on 13.4.2000 and after hearing the parties, the learned Magistrate passed an order on 4.5.2000 for committing case of the petitioner to the Court of Sessions. Thereafter, on 7.5.2000 necessary sanction was obtained by the Prosecuting Agency and was submitted before the Court. Thereafter, on 18.5.2000, the records and proceedings were submitted to the Court of Sessions. The petitioner has challenged the aforesaid proceedings on the ground that the sanction was basic requirement for taking cognizance. That in the present case, the learned Magistrate who received the charge sheet and passed order of committal against the petitioner had already taken cognizance and, therefore, the cognizance has been taken without the aforesaid requirements i.e. without sanction to prosecute the petitioner and, therefore, the cognizance is bad in law and consequently, the Sessions Court cannot legally proceed against petitioner. Therefore, it is contended that the aforesaid action on the part of the Sessions Court is illegal and entire proceedings are required to be quashed and set aside. The petitioner has therefore prayed that this Court may call for R & P of Criminal Case no. 300 of 2000 pending before the learned Metropolitan Magistrate, 11th Court, Ahmedabad and may quash the order of the learned Magistrate registering the charge sheet by taking cognizance of the offences may also quash the proceedings of Criminal Case No. 300 of 2000 pending before the Metropolitan Court, Court no.11, at Ahmedabad.

2. On receiving the petition, notice was issued on 1.5.2000. Thereafter, rule was issued on 8.5.2000 and the respondents have appeared through Mr. A.D.Oza, learned Public Prosecutor. I have heard learned advocate for the parties and have perused the papers.

3. In fact, during the course of arguments, the aforesaid factual aspects were not very much in dispute. At the same time, Mr. Oza, learned Public Prosecutor has argued at length that so far the Magisterial Court is concerned, it is not required to take cognizance of the offences since the offences are exclusively triable by the Sessions Court and, therefore, the learned Magistrate has simply to forward the papers to the Sessions Court

for trial. That Since the offences are exclusively triable by the Sessions Court, the learned Magistrate has no role to play in the matter. Therefore, the argument is that the leaned Magistrate has not taken any cognizance when the matter is triable before the Sessions Court. That the proper course for the present petitioner is to make appropriate submissions before the Sessions court to obtain appropriate orders on merit of the case. As against this, the learned advocate for the petitioner ha also argued at length that the learned Magistrate has already taken cognizance of the offences which is bad in law and therefore the entire proceedings are required to be quashed and set aside. For the aforesaid purpose, the learned advocate for the petitioner has relied upon certain decisions of various courts in support of the said contentions advanced by him on behalf of the petitioner. We can refer the first case of State of U.P. Vs. Lakshmi Brahman and Another reported in AIR 1983 SC 439. There it has been observed that on expiry of 60 days from the date of the arrest of the accused, his further detention does not become ipso facto illegal or void, if the charge sheet is not submitted within the period of 60 days, then notwithstanding anything to the contrary in Section 437 (1), the accused would be entitled to an order for being released on bail if he is prepared to and does furnish bail. The relevant provisions are also found in para.12 of the said judgement which can be reproduced for ready reference as follows :

"Section 170 obligates the Investigating Officer to submit the police report if in the course of investigation sufficient evidence or reasonable ground is made out for the trial or for commitment of the accused, to the Magistrate empowered to take cognizance of the offence upon a police report. On this report being submitted the Magistrate takes cognizance of the offence disclosed in investigation as envisaged by sec. 190. It is indisputable that taking cognizance of an offence under sec. 190 is a purely judicial function subject to judicial review by court of appeal or revision of which the Magistrate is subject. Cognizance of an offence even if exclusively triable by the Court of Sessions has to be taken by the Magistrate because section 193 precludes it from taking cognizance of any offence when it provides that no Court of Sessions shall take cognizance of any offence as a court of original jurisdiction unless the accused has been committed by the

Magistrate under the Code. Thus even in case of an offence exclusively triable by the Court of Sessions, the police report on completion of investigation has to be submitted to the Magistrate having jurisdiction to commit the accused for trial. It is the Magistrate who takes cognizance of the offence and not the Court of Sessions though the case is one exclusively triable by the latter. Sec. 170 directs that if the accused in respect of whom police report is being submitted is in police custody, he has to be forwarded along with the police report to the Magistrate. When the Magistrate receives the report and the accused is produced before him it is necessary for him to pass some order for his further detention subject to provisions contained in Chapter XXXIII as to Bails and Bonds. The view taken by the High Court makes it a necessity for the Magistrate to release the accused on bail even if the accused is not otherwise entitled to the discretionary order of bail nor he applies for nor is ready to furnish bail only because the Magistrate has no jurisdiction to keep the accused in custody till an order committing the accused for trial is made. The High Court referred to sec. 209 which provides that the Magistrate shall commit the accused to Court of Sessions and subject to the provisions of the Code relating to bail, remand the accused to custody during and until the conclusion of the trial. This according to the High Court implies that the Magistrate can exercise power to release on bail or remand to the custody the accused only after making the order of commitment but the Magistrate has no such power anterior to the order of commitment and during the interregnum since the receipt of the charge-sheet. This dichotomy read by the High Court in secs. 207 and 209 is certainly not borne out by the provisions of the Code. Sec. 207 as it then stood made it obligatory for the Magistrate to supply free of costs, copies of the documents set out in the section. The duty cast on the Magistrate by sec. 207 had to be performed in a judicial manner. To comply with sec. 207 which is cast in a mandatory language, when the accused is produced before the Magistrate, he has to enquire from the accused by recording his statement whether the copies of the various documents set out in sec. 207 have been supplied to him or not. No order committing the accused

> to the Court of Sessions can be made under sec. 209 unless the Magistrate fully complies with the provisions of sec. 207. And if it is shown that the copies of relevant documents or some of them are not supplied, the matter will have to be adjourned to get the copies prepared and supplied to the accused. This is implicit in section 207 and sec. 209 provides that on being satisfied that the requisite copies have been supplied to the accused, the Magistrate may proceed to commit the accused to the Court of Sessions to stand his trial. The statutory obligation imposed by sec. 207 read with sec. 209 on the Magistrate to furnish free of costs copies of documents is a judicial obligation. It is not an administrative function. It is a judicial function which is to be discharged in a judicial manner. It is distinctly possible that the copies may not be ready. That makes it necessary to adjourn the matter for some time which nay be spent in preparing the copies and supplying the same to the accused. The Magistrate can proceed to commit the accused for trial to the Court of Sessions only after he judicially discharges the function imposed upon him by sec. 207. This conclusion is fortified by the provisions contained in Chapter XVIII which prescribed the procedure for trial of a case by Court of Sessions. Sec. 226 provides for opening the case for the prosecution. Sec. 227 confers power on the Court of Sessions to discharge the accused if upon consideration of the record of the case and the documents submitted therewith, the Judge considers that there is no sufficient ground for proceeding against the accused. No duty is cast on the Court of Sessions to enquire before proceeding to hear the case of the prosecution under sec. 226 to ascertain whether the copies of the documents have been furnished to the accused because section 207 casts the obligation upon the Magistrate to perform the judicial function.

On the strength of the aforesaid discussion, the learned advocate for the petitioner has argued at length that when the Magistrate has received the charge sheet; he has taken cognizance and therefore it was illegal on the part of the learned Magistrate to take cognizance of the offence in which the sanction was necessary. As against this, Mr. Oza, learned Public Prosecutor has also argued at length that the learned Magistrate had

nothing to do in the matter but simply to forward the papers to the Sessions Court and, therefore, he cannot be said to have taken cognizance of the offence, on receiving charge sheet and by registering the case against the petitioner and by committing case to the Sessions Court and it is argued that Sessions Court is competent to take cognizance of the offence which is exclusively triable by Court of Session. It has also been argued that observations made in para.12 of the said judgement are simple observation which were not relevant to the facts of the case in the said matter and, therefore, according the learned Public Prosecutor they did not amount to a principle enunciated by the Hon'ble Supreme Court.

4. Second decision relied upon by the learned advocate for the petitioner is in the case of Suresh Kumar Bhikamchand Jain Vs. Pandey Ajay Bhusun and Others, reported in AIR 1998 SC 1524. There process was issued by the learned Magistrate for appearance of accused on being satisfied that there is sufficient ground for proceeding. Accused appeared before the learned Magistrate and raised a plea that offence was committed by him in discharge of his official duty and that Court had no power to take cognizance in absence of previous sanction of the Government. The Hon'ble Supreme Court has observed in para. 25 that considering the facts and circumstances of the case, it prima facie appears that the alleged acts on the part of the accused were purported to be in the exercise of official duties. Therefore, a case of sanction under Section 197 of the Code has been prima facie made out.

5. The learned advocate for the petitioner has also relied upon a decision in the case of Sri Vishwa Nath Vs. Sri Yogendra Nath Tripathi and Another, reported in 1986 (2) Crimes 413. There, the plea was taken on behalf of the applicant that the learned Magistrate could not take cognizance of the offences under Section 295 A and 253 A without there being sanction under Section 196 (1) of the Code either from the Central Government or from the State Government. It has been further observed in it that there cannot be any iota of doubt that the Magistrate could not take cognizance of the offences against the applicant as there was no previous sanction of the Central Government or State Government and therefore the accused could not be summoned for those offences by the learned Magistrate and accordingly, the High Court of Allhabad was pleased to allow the said application and to quash the criminal proceedings against the applicant.

6. One more decision has also been reported in Crimes referred to by the learned advocate for the petitioner which has been rendered by the High Court of Rajasthan in the case of Advadh Srivastava and Another Vs. The State of Rajasthan reported in 1997 (1) Crimes 6. There also the petitioner was summoned for offences punishable under Section 295 A of the Code on private complaint without any sanction. There, it was held that Court was debarred from taking cognizance of the offence without previous sanction. Therefore, orders and proceedings were quashed by the said Court.

7. The learned advocate for the petitioner has also relied upon the decision of the Hon'ble Supreme Court in the case of Ramabhai Nathabhai Gadhvi and Others Vs. State of Gujarat, reported in AIR 1997 SC 3475. This matter is related to the TADA Act and the Hon'ble Supreme Court has observed as under :

> "As the provisions of TADA are more rigorous and the penalty provided is more stringent and the procedure for trial prescribed is summary and compendious, the sanctioning process mentioned in Section 20-A(2) must have been adopted more serious and exhaustively than the sanction contemplated in other penal statutes. If there was no valid sanction the Designated Court gets no jurisdiction to try a case against any person mentioned in the report as the court is forbidden from taking cognizance of the offence without such sanction. If the Designated Court has taken cognizance of the offence without a valid sanction, such action is without jurisdiction and any proceedings adopted thereunder will also be without jurisdiction."

8. The learned advocate for the petitioner has also relied upon a decision in the case of Shalibhadra Shah Vs. Swami Krishna Bharti and Another, reported in 1980 GLR 881. There it has been laid down that no complaint can be filed under Section 295 A of the Indian Penal Code without sanction of the Government under Section 196(1) of the said code.

9. We can also refer to a decision in the case of Anirudhsinhji Karansinhji Jadeja Vs. State of Gujarat reported in AIR 1995 SC 2390. There also the question of sanction was in picture. There the matter was slight different. Approval was required to be given by the D.S.P. The said Officer instead of giving approval of his own, sought permission of Additional Chief Secretary,

to proceed under TADA Act. There it is observed that this becomes a case of exercising of powers on the basis of external dictation. The State Government had granted sanction without even discussing the matter with investigating officer. Therefore, there was a lack of due application of mind. The Hon'ble Supreme Court was pleased to direct the petitioner to be released on bail of the aforesaid consideration.

10. With respect to the power and jurisdiction of a Magistrate in an offence exclusively triable by a Court of Session, it would be useful to refer to a case of Rajendar Kumar Jain Vs. State Through Spl. Police Establishment and Others, reported in AIR 1980 SC 1510. There it has been observed that notwithstanding the fact that the offences for which the accused persons were to be tried were exclusively triable by a Court of Session, the Committing Magistrate had jurisdiction to give consent to the Public Prosecutor to withdraw from the prosecution. On referring this decision, it has been argued that Magisterial Court is not simply a post-office but it is also required to apply its mind. Therefore, even in the case exclusive triable by the Court of Session the requisite sanction, according to argument, has to be produced before the Magistrate and not before the Sessions Court.

11. On the other hand, Mr. Oza, learned Public Prosecutor has also relied upon certain decision in support of his arguments. He also relied upon a decision of the Hon'ble Supreme Court in the case of Sanjay Gandhi Vs. Union of India, reported in AIR 1978 SC 514. There, the Hon'ble Supreme Court has considered the powers and jurisdiction of committing Magistrate under Section 209 of the said Code. There it has been laid down that in such cases the committing Magistrate has no power to discharge the accused nor has he power to take oral evidence save where a specific provision like Section 306 enjoins. It has further been observed that it is not open to the committing court to launch on a process of satisfying itself that a prima facie case has been made out on the merits. It has also been observed that the narrow inspection hole through which the Committing Magistrate has to look at the case limits him merely to ascertain whether the case, as disclosed by the police report, appears to the Magistrate to show an offence triable solely by the Court of Sessions. This shows that the powers and jurisdiction of the Committing Court are very narrow.

12. Mr. Oza, leaned Public Prosecutor has also

relied upon a decision of Hon'ble Supreme Court in the case of State of Bihar and Another Vs. P.P.Sharma, reported in AIR 1991 SC 1260. In the said case, observations have been made in para.28 that on the date of issue of sanction, the investigation was over and police reports were submitted before the learned Magistrate. However, issue before the Court was as to whether or not the Sanctioning Authority accorded after due application of mind. This is not an issue before this Court in this matter.

13. Mr. Oza, learned Public Prosecutor has also relied upon a decision in the case of Darshan Singh Ram Krishnan Vs. The State of Maharashtra, reported in AIR 1971 SC 2372. There, it has been laid down that where the charge sheet filed by the police discloses the offence of abatement of forging and impersonation and a Magistrate after perusing only the records submitted by the police under Section 173 of the Code in which none of the witnesses alleged either by directly or indirectly that the accused persons had entered into criminal conspiracy, considered that material before him, framed charge of criminal conspiracy for forging passport and committed the accused for the offence under Section 120 B of the Indian Penal Code. It was held to be quite clear that he took the cognizance of the offence alleged in charge sheet and not of the offence under Section 120 B and hence, committal order was not vitiated for want of consent as required in the section. Therefore, it was observed that learned Magistrate could not be said to have been taken cognizance of the said offence. In para-8 of the said decision it has been observed that as has often been held, taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a magistrate first takes judicial notice of an offence.

14. Mr. Oza learned Public Prosecutor has also relied upon a decision in the case of Jamuna Singh and Others Vs. Bhadai Shah, reported in AIR 1964 SC 1541. There, the learned Magistrate had initially directed inquiry under Section 202 of the Code, it thereafter, the police report was submitted under Section 173 of the said Code. However, since the matter was sent under Section 202 of the Code, it was held that it was a private complaint on which the cognizance was taken and not on the basis of charge sheet filed by the police.

15. The next decision relied upon is from the case of Devarapalli Kakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others, reported in AIR 1976 SC 1672. There, it has been laid down that cognizance can be said to have been taken when the Magistrate applies his mind for proceedings under Section 200 of the said Code.

16. Another decision relied upon is a case of Ajit Kumar Palit Vs. State of West Bengal, reported in AIR 1963 SC 765. In para.19 it has been observed as follows :

> "The word "cognizance" has no esoteric or mystic significance in criminal law or procedure. It merely means become aware of and when used with reference to a Court or Judge, to take notice of judicially. Taking cognizance does not involve any formal action; or indeed action of any kind, but occurs as soon as a Magistrate, as such, applied his mind to the suspected commission of an offence. Where the statute prescribed the materials on which alone the judicial mind shall operate before any step is taken, obviously the statutory requirement must be fulfilled. But statutory provisions apart, there is no set material which must exist before the judicial mind can operate. AIR 1943 Pat 245 (SB) and AIR 1951 SC 207 and ILR 37 Cal 412, Ref to."

17. Similar view was adopted in the decision of Gopal Das Sindhi and Others Vs. State of Assam and Another, reported in AIR 1961 SC 986.

18. However one latest judgement was shown by both the sides. This can be gathered from the case of Birendra K. Singh Vs. State of Bihar, reported in JT 2000 (8) SC 248. The Hon'ble Supreme Court has observed in para.3 as follows :

> "We are of the opinion that the stage for raising such objection cold be when the accused are called upon to address arguments under Sections 227 and 228 of the Code of Criminal Procedure. Such a stage would reach only if the case is committed to the Court of Sessions. The advantage for the accused and the State as well as for the complainant to wait till then is that the order of committal envisaged in Section 202 of the Code and the question can be considered in the light of such materials also. We permit the appellant to raise the contention relating to

sanction under Section 197 of the Code before the Sessions Court at the appropriate stage mentioned above. If any such contention is raised, the same shall be dealt with and disposed of by a speaking order by the Sessions Court untramelled by any observations made in the impugned order. It is needless to say that the appellant shall be released on bail if he filed an application for the same on such conditions as the Chief Judicial Magistrate, Gaya, deems fit to impose."

19. The learned advocate for the petitioner has extensively argued that sanction was necessary when the charge sheet was filed. That in the present case, the sanction was not there when the charge sheet was filed. That it was also not there when the case was committed and the sanction was received only after the case was committed to the Court of Session and before R & P were dispatched to the Sessions Court. Therefore, the learned Magistrate has taken cognizance of the offence without a valid sanction. It has also been argued that the cognizance is required to be taken by the Trial court at the initial stage and not by the Sessions Court after committal of the case. It is therefore argued that when Trial Court had taken cognizance of the offence, there was no valid sanction in existence. For this purpose, he has relied upon the provisions made in Section 196 of the said Code.

It is a fact that dates are not in dispute and they are referred to hereinabove. At the same time, it has also been considered that when the charge sheet was filed, no argument appears to have been advanced by the defence that learned Magistrate has taken cognizance of the offence without any valid sanction against the petitioner. This objection does not appear to have been taken even when the case of the petitioner was committed to the Court of Sessions. It is not the case of the petitioner that such an objection was raised and it was overruled or bypassed by the learned Magistrate. This shows that objection has been raised as soon as he appeared before the Trial Court. He also could raise such an objection as and when he was heard when the case was ordered to be committed. Therefore, when the matter was pending before the learned Magistrate, no such objection seems to have been taken by the defence before the learned Magistrate. Therefore, the Court of Session can appropriately apply its mind to the facts of the case and decide as to whether sanction was necessary and as to whether the sanction is legal and valid and as to whether it has been obtained and submitted at appropriate stage.

This aspect can be gone into by the Sessions Court when the matter is already pending before it and when all the materials are lying before the Sessions Court. In this connection, the aforesaid last mentioned decision makes it very clear that this aspect can be decided by a Court of Session having all materials with it. Now, it is very clear that the Sessions Court cannot take cognizance of the offence directly, it can take cognizance of the offence only when the case is committed to the Court of Session. There is no difficulty and dispute about the said provision of law. At the same time, it makes is clear that even Sessions Court is required to take cognizance of the offence. Only difference is that the Sessions Court has to take cognizance as and when the case is committed to it. It cannot take cognizance of offence directly if the case has not been committed to it. In the present case, the case has been committed to it and the matter is said to be pending at the stage of framing of charge. Then naturally, the learned Sessions Judge or Additional Sessions Judge, as the case may be, will hear the parties and decide as to whether it is a fit case for framing charge against the petitioners. In view of this, it is a stage at which the petitioners can raise a plea that the prosecution did not submit sanction at the time when the learned Magistrate had taken cognizance of the offence, the Sessions court will be in a position to decide as to whether or not the sanction is valid and as to whether or not Sessions Court could proceed when the sanction was not produced before the Trial Court till the case was committed. The Sessions Court will also be in a position to decide as to what is the value of the sanction obtained after the case was committed to the Court of Sessions but before the Sessions Court had taken cognizance of offence. In the present case, the Sessions Court had received R & P and the matter is pending at the stage of farming of charge. Therefore, at the time when the R & P were received and sessions case was registered against the petitioners the sanction was already there on record. The Sessions Court will naturally to consider this aspect of the case and to decide as to whether the said action on the part of the respondents can be treated to be legal and valid. The Supreme Court has observed in the aforesaid matter that such dispute can be raised before the Sessions Court at the time of framing of charge and Sessions Court will be in a better position to consider and decide the said issue after having regard to all the materials which could be available to it since the Sessions Court is having R & P including the charge sheet will necessary notice papers. It has been argued at length that the learned Magistrate has already taken cognizance and,

therefore, it was illegal on his part to take cognizance of the offence in absence of valid sanction. Now, this point can be raised before the Sessions Court. Moreover, so far taking of cognizance of offence is concerned, the Sessions Court will take cognizance of offence after the Magisterial Court passes committal order. In the present case, when the Sessions Court received the papers, the said papers contained sanction and there is no dispute about the same. I am therefore of the view that this is a fit case where in the Sessions Court should decide the aforesaid issue after due consideration to all materials placed before it. When the Sessions Court will have to decide the aforesaid issue it may not be just and proper to deal with the said issue in detail in this application. The reason is that observation of this Court may prejudice the mind of the Sessions Court while deciding the aforesaid issue and, therefore, I respectfully follow the decision of the Hon'ble Supreme Court in the case of Birendra K. Singh Vs. State of Bihar, reported in JT 2000 (8) SC 248 and hold that so far as this petition is concerned, the Sessions Court will hear and decide the issue if and when raised before it. In this view of the matter, it is not necessary for this Court to discuss and decide the issue at length and to consider the same on merits. With this observation, nothing is required to be done by this Court and, therefore, I am of the view that without making observation on the merits of the case, petition should be disposed and rule should be discharged.

20. It is made clear that parties would be at liberty to make appropriate submissions before the Sessions Court on the point of validity of sanction as well as on the point of stage at which the sanction was required to be submitted before the Court and also to the consequential effect of submission of sanction before the learned Magistrate after the committal order was passed but before R & P were sent to the Court of Sessions. The Sessions Court may also decide as to the effect of sanction received by the Sessions Court along with R & P from the Trial Court before farming of charge and before taking cognizance of the offence by the Sessions Court.

21. The parties will be at liberty to make appropriate submissions of rival case before the Sessions court on above aspect as well as other aspects of law and fact before the Sessions Court and if and when such objection and points are raised before the Sessions court it would be for the Sessions Court to decide and dispose of the same on merit after affording reasonable opportunity of being heard.

22. In the aforesaid view of the matter, I am of the view that this petition should be dismissed and rule should be discharged and accordingly this petition is ordered to be disposed of and rule is discharged.

(D.P.Buch,J)
(vipul)